

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed January 13, 2009. At the time of the Final Office Action, Claims 15-32 were pending in this Application. Claims 15-32 were rejected. Claims 1-14 were previously cancelled without prejudice or disclaimer. Applicant respectfully requests reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 103

Claims 15-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0016804 by Michael A. Sheha et al. ("*Sheha*") in view of U.S. Patent Application Publication No. 2004/0203907 by Thomas L. Hiller et al. ("*Hiller*") and further in view of U.S. Patent Application Publication No. 2005/0141541 by Renaud Cuny et al. ("*Cuny*"). Applicant respectfully traverses and submits the cited art combinations, even if proper, which Applicant does not concede, do not render the claimed embodiment of the invention obvious.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.* (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S. Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog*

Enters., Inc. v. Fisher-Price, Inc., 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 127 S. Ct. at 1741).

The Examiner argues in the Final Office Action that pending Claims 15-32 are rendered obvious by the combination of *Sheha*, *Hiller*, and *Cuny*. Applicant respectfully disagrees and submits that the Examiner's combination of these references is improper.

In a previous Office Action dated July 8, 2008, the Examiner rejected the then-pending claims in view of *Sheha* and U.S. Patent No. 6,285,281 issued to Steven M. Gatto ("*Gatto*"), and further in view of *Cuny*. (Office Action dated July 8, 2008.) In response, Applicant argued that the combination of *Sheha*, *Gatto*, and *Cuny* is improper. (September 8, 2008, Response to Office Action, Page 7-8.) Specifically, Applicant argued that one of ordinary skill in the art would not look to *Gatto* or combine any teaching from *Gatto* with *Sheha* because *Gatto* concerns half-duplex systems and *Sheha* deals with a duplex system. (*Id.* at 7.)

The Examiner apparently agrees with Applicant's argument as the Examiner no longer relies on *Gatto*, but has substituted *Hiller* in its place in rejecting Claims 15-32. (Final Office Action, Page 2.) However, Applicant respectfully submits that the combination of *Hiller* and *Sheha* is improper for the very same reasons that the combination of *Gatto* and *Sheha* is improper. One of ordinary skill in the art having a mobile phone system as disclosed by *Sheha*, would not look to *Hiller* or combine any teaching from *Hiller* with *Sheha*, because *Hiller* concerns a half-duplex system (*Hiller* at Abstract ("Voice packets transmitted by an originating wireless user for use in a half-duplex communication mode in a one to many communication session . . .")) while *Sheha* concerns a duplex system (a mobile phone network system). To be sure, one of ordinary skill in the art would have to use inventive skills to decide which of the two systems, half or full duplex, he would use and how to integrate these two different systems with each other. If one having ordinary skill in the art would nevertheless combine *Hiller* and *Sheha*, then it is not possible that a PoC system would be developed without inventive skills, because as the Examiner has acknowledged, (*see* Final Office Action, Page 3), *Hiller* and *Sheha* disclose systems without PoC services or systems.

The Examiner has stated that one of ordinary skill in the art would combine *Hiller* with *Sheha* because “registered users within the group or fleet that are not in the desired audience group due to geographic location will not be bothered with listening to communications that are not relevant to them.” (Final Office Action, Page 3.) Applicant respectfully submits, however, that this statement, which is taken straight from the *Hiller* disclosure (*see* [0027]), does not evidence or provide any motivation to combine *Hiller* with *Sheha*. Nothing in *Sheha* suggests a need to block certain communications from being broadcast to users based on their respective geography—or for any other reason. In fact, the goal in *Sheha* is to provide additional information (e.g., position information) to all users of the disclosed position determination system, not to block certain users from receiving information (i.e., the result of the *Hiller* passage on which the Examiner relies). Thus, Applicant respectfully submits that the very passage in *Hiller* cited by the Examiner as providing motivation to combine actually teaches away from combining *Hiller* with *Sheha*.

Further, the Examiner confirms that *Sheha* and *Hiller* fail to disclose PoC terminal devices and that a user has pressed the corresponding PoC talk button for such a device. (Final Office Action at 3.) The Examiner further considers this difference to be taught by *Cuny* because one of ordinary skill in the art would seek to reduce end-to-end delays during a PoC conversation. (Final Office Action at 3.) The Applicant respectfully disagrees.

One of ordinary skill in the art would not look to *Cuny* to reduce end-to-end delays during a PoC conversation, because both *Sheha* and *Hiller* do not concern PoC services. As explained above, if one of ordinary skill in the art would nevertheless combine *Hiller* and *Sheha*, he would arrive at a system absent PoC services, because *Hiller* and *Sheha* disclose systems without PoC services or systems. A problem or motivation based on reducing end-to-end delays unique to PoC conversations would therefore not be faced by one of ordinary skill in the art. Consequently, the subject matter of the independent claims is not obvious in view of a combination of *Cuny*, *Sheha*, and *Hiller*.

In summary, the Examiner has apparently agreed with Applicant that the combination of references cited in the previous Non-Final Office Action (i.e., *Sheha*, *Gatto*, and *Cuny*) is improper. In withdrawing the rejection based on those references, the Examiner has simply

substituted *Hiller* for *Gatto*. However, *Hiller* discloses the very same features as are disclosed in *Gatto*,¹ and *Hiller* provides no motivation to combine as suggested by the Examiner. In fact, as previously discussed, *Hiller* teaches away from use in the *Sheha* system.

For at least the foregoing reasons, Applicant respectfully submits that *Cuny*, *Sheha*, and *Hiller* fail to disclose that, at least, the terminal devices are PoC terminal devices and that a PoC talk button is pressed. As a result one of ordinary skill in the art would not combine *Cuny*, *Sheha*, and *Hiller* to arrive at the subject matter of Claims 15-32. Thus, Applicant respectfully requests reconsideration and allowance of the pending independent claims. Applicant submits that the dependent claims are allowable at least to the extent of the independent claim to which they refer. Thus, Applicant respectfully requests reconsideration and allowance of the dependent Claims. Applicant reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. § 103(a), if necessary, and does not concede that the Examiner's proposed combinations are proper.

¹ To be sure, like *Gatto*, the Examiner relies on *Hiller* solely for its disclosure of a button that is pressed to initiate communication. Also like the case with *Gatto*, the Examiner admits that *Hiller* also does not disclose a PoC device. (Final Office Action, Page 3.)

CONCLUSION

Applicant has made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicant respectfully requests reconsideration of the pending claims.

Applicant encloses a \$130 (One Month Extension of Time fee) to Deposit Account No. 50-4871 of King & Spalding LLP. Applicant believes no additional fees are due at this time. However, should the Commissioner deem that any additional fees are due, including any fees for additional extensions of time, the Commissioner is hereby authorized to debit such fees from Deposit Account No. 50-4871 of KING & SPALDING LLP.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.457.2030.

Respectfully submitted,
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